

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES R. KERNS,

Petitioner, No. CIV S-05-0746 GEB KJM P

vs.

A.K. SCRIBNER,

Respondent. ORDER

Plaintiff is a prisoner proceeding pro se with a petition for habeas corpus under 28 U.S.C. § 2254, challenging his Sacramento County Superior Court conviction of murder. On August 15, 2005, he filed a motion for an order directing Sacramento County Superior Court to return a picture he attached to one of his state collateral review petitions.

Petitioner avers the picture, of one Jonathan Bush, is essential proof of his innocence, because the picture was shown to an eyewitness to the murder who identified Bush as the murderer. Petitioner has not alleged that the portion of the trial in which the picture was used is omitted from the reporter's transcript or that the record of the state proceedings lodged with this court will fail to support his claim without the original picture.

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On August 24, 2005, petitioner asked that the court provide him with a copy of his motion for the appointment of counsel. As noted in the letter sent to petitioner on April 18, 2005, the court does not provide copies.

IT IS HEREBY ORDERED:

1. Petitioner's August 24, 2005 request for copies is denied; and
2. Petitioner's August 15, 2005 request for an order directing Sacramento County Sheriff to release a copy of a photograph is denied without prejudice.

DATED: October 26, 2005.

UNITED STATES MAGISTRATE JUDGE

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